

## NARRATIVE TO NOTICE OF APPEAL

Now come Appellants, Donald Palmer and Laurel Palmer, as Trustees of the Palmer Family Trust, by and through their attorney, Kevin T. Brennan, Esq., of Brennan Punderson & Donahue, PLLC, and, pursuant 24 V.S.A. § 4465, hereby give notice of appeal to the Town of Richmond from the July 15, 2020, decision of the Richmond Zoning Administrator denying Appellants the right to improve a pre-existing access by way of an existing driveway over property they own at 640 Palmer Lane, Richmond, Vermont. The Palmers reside at 10 Tyler Way, Unit 216, Williston, Vermont, 05495. This appeal seeks a variance pursuant to Richmond Zoning Regulation § 8.4.5 from Richmond Zoning Regulation § 6.9, Wetlands, and a permit to improve said driveway. A variance is justified under 24 V.S.A. § 4469(a).

This appeal pertains to the Palmers' Richmond parcel (640 Palmer Lane), but it involves a second parcel, a 42.3-acre Hinesburg parcel, (no current E911 address), also owned by the Palmers. The two parcels share a boundary for approximately 50 feet on the South side of the Richmond parcel. The driveway to access the Hinesburg parcel begins in the Richmond parcel and continues onto the Hinesburg parcel. Exhibit 1 is the Agency of Natural Resources Map of the two parcels. The Palmers' parcel in Richmond is outlined in blue and described in the data box on the map. The Palmers' Hinesburg parcel is adjacent and to the Southeast. Without a variance, the Palmers will be unable to use their Richmond parcel in a manner which is necessary to develop their Hinesburg parcel. Nor will they be able to sell the Hinesburg parcel for development purposes.

Both parcels have been owned by the Palmers for many years, and by Mr. Palmer's parents for years before that. The driveway had been used as an old agricultural road for decades. In 2012, the Palmers improved the road to be able to conduct forestry operations on the Hinesburg parcel. There has never been any development on the Palmers' Hinesburg parcel or Richmond parcel.

In October, 2019, the Palmers entered into a contract to sell the Hinesburg parcel to nearby Hinesburg residents, Bradley Stetler and Susanne Miller. Their two daughters each intend to return to Hinesburg to build a house on the parcel. A title search revealed the existence of a presumptive Class II wetland on the Vermont Significant Wetland Inventory Map, exhibit 2, on the Richmond parcel close to where it is adjacent to the Hinesburg parcel. The Palmers' only vehicular access to the Hinesburg parcel passes over this presumptive Class II wetland in Richmond, as the only common boundary is the approximately 50-foot section apparent on exhibit 1.

The Palmers will be unable to develop their Hinesburg parcel, or close on the current contract on the parcel which is intended for development, without approval from the Town of Richmond to improve the driveway on the Richmond parcel, as there is no other access to the Hinesburg parcel. Not only is this the practical reality, but the Hinesburg Development Review Board stated in 2002 that due to a lack of frontage on a town road, the 42.3 acre Hinesburg parcel shall not be considered a lot and shall not be placed in separate ownership, and no zoning permit for development will be issued, without development of a private right of way. Hinesburg

DRB, Final Plat Approval for Donald and Laurel Palmer 2-lot subdivision, May 7, 2002. Exhibit 3.

Given the existence of the presumptive wetland, the Palmers retained Evan Fitzgerald of Fitzgerald Environmental Associates to conduct a wetland delineation with the goal of obtaining a wetland permit for the driveway from the Vermont Department of Environmental Conservation and from the U.S. Army Corps of Engineers. These state and federal agencies classify and regulate Vermont wetlands. Mr. Fitzgerald determined that the driveway passes through approximately 60 feet of Class II wetland and approximately 130 feet of buffer in Richmond, and continues for another approximately 350 feet through Class II wetland buffer in Hinesburg.

The DEC District Wetland Ecologist and the Army Corps of Engineers Ecologist have conducted field examinations of both parcels and have reviewed Mr. Fitzgerald's delineation. The Army Corps Ecologist has stated that no federal permit is necessary. The DEC Ecologist has given informal advice that the DEC is likely to issue a wetland permit for improvement of the driveway in both Richmond and Hinesburg as requested, in the absence of new information presented during the formal permitting process which is underway, and under certain conditions which are outlined below. The final wetland delineation by Mr. Fitzgerald, exhibit 4, which has been reviewed by the state and federal ecologists and submitted with the DEC permit application, contains conditions proposed by the DEC to minimize the impact on the wetland due to improvement of the driveway and to restore other parts of the wetland and its buffer to a natural state. Mr. Fitzgerald expects the DEC to issue the permit within 90 days.

Believing that the State wetland permit will be forthcoming, the Palmers contacted the Richmond Zoning Administrator who was presented with the question of whether a driveway in Richmond to access the Hinesburg parcel for a small residential development was a "roadway" for purposes of Section 6.9 of the Richmond Zoning Regulations, which states that no building, roadway or septic system shall be constructed in a wetland. After consulting with Town counsel, the Zoning Administrator informed the Palmers in writing on July 15, 2020, that a driveway is a roadway under that provision and that Section 6.9 of the Zoning Regulations prohibited an improvement of the driveway.

The Palmers should be granted a variance. Their Richmond lot has a unique physical and topographical circumstance over which the Palmers have no control: a Class II wetland in the short driveway access to the adjacent 42.3-acre Hinesburg parcel. There is no other way to access this parcel. Should a variance from Section 6.9 of the Richmond Zoning Regulations not be granted, they will be unable to develop the adjacent Hinesburg parcel themselves, nor be able to sell that parcel. They will be deprived of a reasonable and very valuable use of their properties.

The expected issuance of the State Department of Environmental Conservation wetland permit demonstrates that the Town of Richmond should issue a variance, following the lead of the state and federal regulatory agencies, and grant a permit to improve the Richmond driveway. The proposed additional road fill is only two feet along its length. The state, federal and municipal governments have a common goal: protecting wetlands. The U.S. Army Corps does not believe a permit is necessary. The State DEC has an elaborate, science-based, process to assure that this common goal will be satisfied.

The State will not issue a wetland permit unless the landowner can show that the proposed activity cannot be practically conducted outside of the owner's wetland to satisfy the project purpose, and if it cannot, that all reasonable measures be taken to avoid and minimize adverse impacts on the protected functions of the wetland. See Vermont Wetland Rules, Section 9, adopted February 7, 1990, amendments effective through January 21, 2020. To that end, the State DEC Ecologist's preliminary assessment is that the driveway can be improved provided that the surface width be minimized in accordance with town requirements, that additional drainage be installed for proper hydrology to pass under the driveway, and that both wetland and buffer areas be restored to their natural states with permanent demarcation in certain locations. The final detail delineation and plan, exhibit 4, submitted to the State, has incorporated these recommendations. The plan given preliminary approval by the State is designed to minimize the impact; for the same reasons, the variance sought here, with similar conditions imposed, would represent the least deviation possible under the bylaws.

The proposed variance will not alter the essential character of the neighborhood in which the property is located. Rather, it will improve the hydrology from its current state and it will restore nearly 17,000 square feet of wetland and its buffer to its original state as outlined in exhibit 4. It will not impair the appropriate use or development of adjacent property; rather, it will permit it. It will not reduce access to renewable energy resources, nor will it be detrimental to the public welfare.

For the foregoing reasons, the Palmers respectfully urge the Town of Richmond to issue the variance sought and permit them to improve the driveway in Richmond to the specifications outlined in the Fitzgerald delineation which is under formal review by the Vermont Department of Environmental Conservation.